

ESTTA Tracking number: **ESTTA295019**Filing date: **07/13/2009**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Heroes, Inc.
Granted to Date of previous extension	07/12/2009
Address	666 11th Street, NW Suite 300 Washington, DC 20001 UNITED STATES
Attorney information	James L. Bikoff, David K. Heasley Silverberg, Goldman & Bikoff LLP 1101 30th St. NW, Suite 120 (and Jenny R. Splitter) Washington, DC 20007 UNITED STATES jsplitter@sbgdc.com, jbikoff@sbgdc.com, dheasley@sbgdc.com Phone:2029443300

Applicant Information

Application No	77390949	Publication date	01/13/2009
Opposition Filing Date	07/13/2009	Opposition Period Ends	07/12/2009
Applicant	ROSENBAUER INTERNATIONAL AKTIENGESELLSCHAFT Paschinger Strasse 90 Leonding, A-4060 AUSTRIA		

Goods/Services Affected by Opposition


Class 009. All goods and services in the class are opposed, namely: PROTECTIVE HELMETS, IN PARTICULAR FIRE FIGHTING HELMETS; PROTECTIVE CLOTHING, IN PARTICULAR CLOTHING FOR PROTECTION AGAINST HEAT AND CLOTHING FOR PROTECTION AGAINST HAZARDOUS SUBSTANCES FOR FIRE FIGHTERS
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Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	827676	Application Date	04/22/1966
Registration Date	04/18/1967	Foreign Priority	NONE

		Date	
Word Mark	HEROES INC.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U100 (International Class 035, 036, 037, 038, 039, 040, 041, 042). First use: First Use: 1964/11/18 First Use In Commerce: 1964/12/24 AIDING THE WIDOWS AND CHILDREN OF FIREMEN AND POLICEMEN KILLED IN THE LINE OF DUTY IN WASHINGTON, D;C;, MARYLAND AND VIRGINIA, IN FINANCIAL, LEGAL, AND LIKE CAUSES		

U.S. Registration No.	2142514	Application Date	02/18/1997
Registration Date	03/10/1998	Foreign Priority Date	NONE
Word Mark	HEROES, INC.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1964/11/18 First Use In Commerce: 1964/12/24 charitable fund raising services and charitable services, namely, aiding the families of fire fighters and police officers killed in the line of duty by providing funds to the victims families Class 042. First use: First Use: 1964/11/18 First Use In Commerce: 1964/12/24 charitable services, namely, aiding the families of fire fighters and police officers killed in the line of duty by providing access to legal services, medical services and counseling to the victims families		

U.S. Registration No.	2927593	Application Date	02/27/2004
Registration Date	02/22/2005	Foreign Priority Date	NONE
Word Mark	HEROES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1964/11/18 First Use In Commerce: 1964/12/24 CHARITABLE FUND RAISING SERVICES AND CHARITABLE SERVICES,		

	<p>NAMELY, AIDING THE FAMILIES OF FIRE FIGHTERS AND POLICE OFFICERS KILLED IN THE LINE OF DUTY BY PROVIDING FUNDS TO THE VICTIMS FAMILIES</p> <p>Class 042. First use: First Use: 1964/11/18 First Use In Commerce: 1964/12/24</p> <p>CHARITABLE SERVICES, NAMELY, AIDING THE FAMILIES OF FIRE FIGHTERS AND POLICE OFFICERS KILLED IN THE LINE OF DUTY BY PROVIDING ACCESS TO LEGAL SERVICES TO THE VICTIMS FAMILIES</p> <p>Class 044. First use: First Use: 1964/11/18 First Use In Commerce: 1964/12/24</p> <p>CHARITABLE SERVICES, NAMELY, AIDING THE FAMILIES OF FIRE FIGHTERS AND POLICE OFFICERS KILLED IN THE LINE OF DUTY BY PROVIDING ACCESS MEDICAL SERVICES AND PSYCHOLOGICAL SUPPORT COUNSELING TO THE VICTIMS FAMILIES</p>
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Attachments	<p>72244113#TMSN.gif (1 page)(bytes)</p> <p>76578125#TMSN.gif (1 page)(bytes)</p> <p>Notice of Opposition.tif (7 pages)(3873044 bytes)</p>
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/jenny r. splitter/
Name	Jenny R. Splitter
Date	07/13/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 77/390,949
Published in the Official Gazette on January 13, 2009

Heroes, Inc. (a non-profit District
of Columbia corporation),

Opposer,

v.

Opposition No. _____

Rosenbauer International Aktiengesellschaft
(an Austrian Aktiengesellschaft),

Applicant.

NOTICE OF OPPOSITION

Heroes, Inc., a District of Columbia non-profit corporation having its principal place of business at 666 11th Street, NW, Suite 300, Washington, DC 20001, believes that it will be damaged by and thus opposes registration of the mark HEROS that is the subject of Application Serial No. 77/390,949, for use in connection with *protective helmets, in particular fire fighting helmets; protective clothing, in particular clothing for protection against heat and clothing for protection against hazardous substances for fire fighters*, based on intent to use the commerce in International Class 9. As provided by 15 U.S.C. 1052, 1063, and all other applicable authority, and predicated upon the following grounds, Opposer alleges as follows in opposition to registration of the above-referenced mark:

1. Applicant, Rosenbauer International Aktiengesellschaft, is an Austrian Aktiengesellschaft or Stock Corporation located at Paschinger Strasse 90, Leonding, A-4060 Austria.
2. On February 14, 2008, Applicant filed Application No. 77/390,949 to register the mark HEROS based upon an intention to use the mark in commerce in connection with *protective helmets, in particular fire fighting helmets; protective clothing, in particular clothing for protection against heat and clothing for protection against hazardous substances for fire fighters*, in International Class 9. The mark was published for opposition in the January 13, 2009 edition of the Official Gazette. Opposer filed motions to extend the deadline to oppose the HEROS mark until July 12, 2009. As July 12, 2009 is a Sunday, the deadline to file the opposition is July 13, 2009.
3. Opposer is the owner of U.S. Registration No. 827,676 for HEROES INC. (& Design) for *aiding the widows and children of firemen and policemen killed in the line of duty in Washington, DC, Maryland and Virginia, in financial, legal and like causes*, U.S. Registration No. 2,142,514 for HEROES, INC. for *charitable fund raising services and charitable services, namely, aiding the families of fire fighters and police officers killed in the line of duty by providing funds to the victims' families* in International Class 36, *and charitable services, namely, aiding the families of fire fighters and police officers killed in the line of duty by providing access to legal services, medical services and counseling to the victims' families* in International Class 42, and U.S. Registration No. 2,927,593 for HEROES for *charitable fund raising services and charitable services, namely, aiding the families of fire fighters*

and police officers killed in the line of duty by providing funds to the victims' families in International Class 36, and *charitable services, namely, aiding the families of fire fighters and police officers killed in the line of duty by providing access to legal services to the victims' families* in International Class 42, and *charitable services, namely, aiding the families of firefighters and police officers killed in the line of duty by providing access to medical services and psychological support counseling to the victims' families* in International Class 44 (the "HEROES Marks"). Opposer has continuously used its HEROES Marks in interstate commerce since at least as early as December 24, 1964, and is currently using the marks in interstate commerce in connection with the above-referenced services.

4. Heroes' U.S. Registration No. 827,676 for HEROES INC. (& Design) and U.S. Registration No. 2,142,514 for HEROES, INC. are valid, subsisting and incontestable, and U.S. Registration No. 2,927,593 for HEROES is valid and subsisting.
5. Heroes, Inc. was founded in July 1964 by a group of 100 civic-minded citizens of the Washington, DC Metropolitan Area to provide services for the families of law enforcement officers and firefighters who give their lives in the line of duty.
6. Opposer provides financial and professional aid to the survivors of law enforcement officers and firefighters killed in the line of duty who served in Washington, DC, Maryland and Virginia. When Opposer learns that a firefighter or law enforcement officer has died in the line of duty, Opposer provides the surviving spouse of the deceased with financial assistance. Opposer also provides charitable services to children of the families: specifically, mentoring, educational and scholarship

assistance. Finally, Opposer has distributed hats bearing the HEROES Marks to donors and supporters. Opposer provides these goods and services under the HEROES Marks.

7. Through long and continuous use, Opposer's HEROES Marks have become well-known to members of the public and, in particular, to police officers and firefighters and their families and survivors. Moreover, Opposer has built up a high degree of distinctiveness and valuable goodwill in its name, reputation and the HEROES Marks through its investment of time, effort and money over the course of the last five decades. As a result, Opposer's name and its HEROES Marks are famous marks, synonymous with the Opposer and its services and programs.
8. Applicant's HEROS mark is virtually identical to the HEROES Marks, but for the misspelling of the word "heros." Applicant intends to use the HEROS mark for clothing and gear marketed to fire fighters; Heroes markets its goods and services to fire fighters and their families.
9. As both Heroes' goods and services and the Applicant's proposed goods serve firefighters, members of the public are likely to be confused and believe there is a connection between the Applicant's HEROS mark and the HEROES Marks.
10. Opposer has not authorized Applicant to use or register the HEROS mark, nor does Opposer exercise any control over Applicant's use of the mark.
11. Registration and use of Applicant's mark will therefore reduce the value of the goodwill associated with Opposer's HEROES Marks.
12. Registration and use of Applicant's mark will also therefore result in dilution of Opposer's HEROES Marks, as it would lessen the capacity of those famous marks to

identify and distinguish Opposer's services.

13. If Applicant were granted registration of its mark, it would thereby obtain a *prima facie* exclusive right to use the mark in connection with the goods described in its application, contributing to the damage and injury that would be suffered by Opposer.
14. Registration and use of Applicant's mark is likely to damage Opposer's reputation and to injure and impair Opposer's rights in its HEROES Marks by causing confusion, mistake and/or deception as to the source of the goods offered by Applicant. Persons familiar with Opposer's HEROES Marks will be likely to purchase Applicant's goods under the mistaken belief that they are marketed by, or in some way affiliated with, sponsored, approved or endorsed by, Opposer. In addition, any defect, failure, or fault with respect to the goods offered by Applicant under the proposed mark will erode the valuable goodwill associated with Opposer and its famous HEROES Marks.
15. For these reasons, Opposer expressly alleges and asserts that registration of the HEROS mark by Applicant for the referenced services would be inconsistent with the standards for registration set forth in 15 U.S.C. §1052, 1063, and other applicable authority.

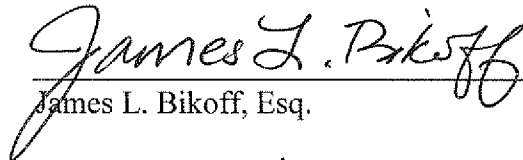
WHEREFORE, Opposer respectfully requests that this Opposition be sustained and that registration of Applicant's HEROS mark be refused.

In accordance with 37 C.F.R. §2.6(a)(17), the governmental fees have been paid for with the electronic filing of this opposition and any additional fees are hereby authorized to be drawn from Deposit Account No. 50-0995 of Silverberg, Goldman & Bikoff, L.L.P.

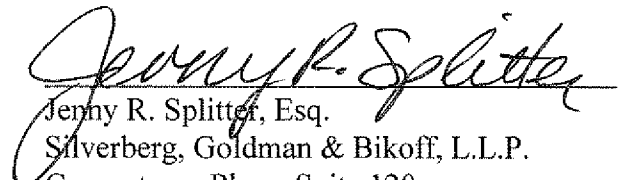
Respectfully submitted,

HEROES, INC.

By:


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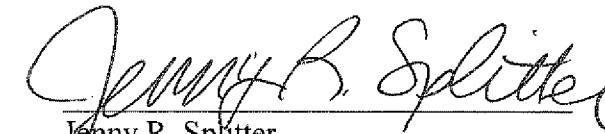
Date: July 13, 2009

Attorneys for Opposer

Certificate of Service

I hereby certify that on this 13th day of July, 2009 a copy of the foregoing was sent by
overnight mail to:

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